

FDF:cf  
1399-181  
pld\m-Relief  
6-2-00

JK 25  
06/05/2000 12:34

MAIL BOX  
CLERK, U.S. DIST. CT.  
S.D. OF FLA - MIA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

HENRY NARANJO and  
MARLENE RAMIREZ,

CASE NO.: 00-6022-CIV-LENARD  
MAGISTRATE JUDGE TURNOFF

Plaintiff(s),

vs.

STEPHEN BYRON SMITH,

Defendant(s).

/

MOTION FOR RELIEF FROM JUDGMENT

COME NOW the Plaintiffs, HENRY NARANJO and MARLENE RAMIREZ, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 60(b), file this motion for relief from Judgment and state as follows:

1. On May 24, 2000, the Court entered an Order of Dismissal based upon the Plaintiffs' failure to comply with the Court's Referral to Mediation.
2. The undersigned attorney was responsible for scheduling the mediation and timely filing the Notice of Scheduling Mediation.
3. The mediation had been scheduled, but due to an oversight, the Notice of Scheduling Mediation was not timely filed. A copy of the Notice of Scheduling Mediation mailed on May 24, 2000, and stamped by the Clerk on May 26, 2000, is attached hereto as Exhibit A.



Case No. 00-6022-CIV-LENARD

4. This case has been moving forward in an expeditious manner in all respects and significant discovery has been carried out by all parties. Expert witnesses have been retained and have reviewed the facts underlying this claim, and the Plaintiffs have filed a motion to bring in a second defendant.
5. This case involves a significant personal injury to the Plaintiff stemming from an explosion onboard a yacht and therefore it is governed by maritime law. The statute of limitations for a maritime personal injury is three years and will expire on July 7, 2000.
6. The undersigned attorney respectfully request this Honorable Court to rule on this Motion for Relief from Judgment prior to the expiration of the July 7, 2000 statute of limitations.

MEMORANDUM OF LAW

Rule 60(b)(1) provides for a party to seek relief from judgment or order for a mistake, inadvertence, surprise, or excusable neglect. The parties had agreed on a mediator but the undersigned had inadvertently failed to calendar the date for the filing of the Order of Mediation. The case is being moved forward and the parties have agreed to take the necessary out-of-state depositions in August, 2000, and the local depositions shortly thereafter. Mediation is scheduled for March 12, 2001, and the case is set on the court's trial docket for October 25, 2001.

An order to grant relief from a judgment or order on a Rule 60(b)(1) motion is committed to the sound discretion of the District Court. Sacco vs. Matter, 154 FRD 35 (ND NY 1994). Motions under sub-section b(1) should be liberally construed and any doubt resolved in favor of an application to set aside a judgment or order so that the case may be tried on its merits. Laguna

Case No. 00-6022-CIV-LENARD

Royalty Company v. Marsh, 350 F.2d 817 (5<sup>th</sup> Cir. 1965).

WHEREFORE, the Plaintiffs respectfully request the Court for relief from the Order of Dismissal dated May 24, 2000 and direct the Court to re-open the case.

CERTIFICATE OF SERVICE

28 IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was mailed this day of June, 2000, to:

John D. Kallen, Esquire  
Badiak, Will & Kallen  
Attorneys for Stephen Byron Smith  
17071 West Dixie Highway  
North Miami Bch, FL 33160  
Tel: 305/945-1851 Fax: 305/944-8780

Respectfully submitted,

LAW OFFICES OF JOHN W. BURKE, P.A.  
**Manuel Valdes, Esquire** --Fla. Bar No.13307  
Co-Counsel for Plaintiff  
Suite 330, Ocean Bank Building  
782 N.W. 42nd Avenue  
Miami, FL 33126  
Tel: 305/858-6000 Fax: 305/445-0404

and

UNDERWOOD, KARCHER & KARCHER, P.A.  
**F. David Famulari, Esquire**  
Co-Counsel for Plaintiff  
6th Floor, Grove Plaza Building  
2900 S. W. 28th Terrace  
Miami, Florida 33133  
Tel: 305/446-2300 Fax: 305/ 446-5858

BY:

  
F. DAVID FAMULARI, ESQUIRE  
FLA. BAR NO. 0860506

FDF:cf  
1399-181

5-25-00

30

0.0.  
005 MAY 26 AM 10:27

CLERK'S OFFICE, U.S. DISTRICT CT.  
S.D. OF FLA - MIA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

HENRY NARANJO and  
MARLENE RAMIREZ,

CASE NO.: 00-6022-CIV-LENARD  
MAGISTRATE JUDGE TURNOFF

Plaintiff(s),

vs.

STEPHEN BYRON SMITH,

Defendant(s).

/

NOTICE OF SCHEDULING MEDIATION

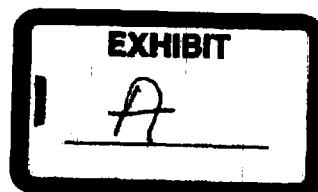
COME NOW the Plaintiffs, HENRY NARANJO and MARLENE RAMIREZ, by and through their undersigned counsel, and pursuant to Federal Rules of Civil Procedure 16(C)(9) and Southern District Local Rule 16.2, file the attached Mediation Order and states as follows:

1. The parties have agreed to use Thomas Bachmyer and have scheduled a mediation conference for March 12, 2001 at Miami, Florida.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was mailed this

26 day of May, 2000, to:



R

Case No. 00-6022-CIV-LENARD

John D. Kallen, Esquire  
Badiak, Will & Kallen  
Attorneys for Stephen Byron Smith  
17071 West Dixie Highway  
North Miami Bch, FL 33160  
Tel: 305/945-1851  
Fax: 305/944-8780

Respectfully submitted,

LAW OFFICES OF JOHN W. BURKE, P.A.  
**Manuel Valdes, Esquire**  
Fla. Bar No.13307  
Co-Counsel for Plaintiff  
Suite 330, Ocean Bank Building  
782 N.W. 42nd Avenue  
Miami, FL 33126  
Tel: 305/858-6000 Fax: 305/445-0404

and

UNDERWOOD, KARCHER & KARCHER, P.A.  
**F. David Famulari, Esquire**  
Co-Counsel for Plaintiff  
6th Floor, Grove Plaza Building  
2900 S. W. 28th Terrace  
Miami, Florida 33133  
Tel: 305/446-2300 Fax: 305/446-5858

BY:

  
F. DAVID FAMULARI, ESQUIRE  
FLA. BAR NO. 0860506

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 00-6022-CIV-LENARD/TURNOFF

HENRY NARANJO and MARLENE  
RAMIREZ,

Plaintiff(s),

vs.

STEPHEN BYRON SMITH,

Defendant(s).

ORDER SCHEDULING MEDIATION

The mediation conference in this matter shall be held with THOMAS BACKMEYER, of  
Florida Mediation Group on March 12, 2001 at 10:30a.m., at  
Miami, Florida.

Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was continued with the consent of the parties, or whether the mediator declared an impasse.

DONE AND ORDERED at Miami, Florida, this \_\_\_\_ day of May, 2000.

---

JOAN A. LENARD  
UNITED STATES DISTRICT JUDGE